

AGENDA
Fair Political Practices Commission
Interested Persons Meeting
Thursday, March 7, 2013 2:00 PM
428 J Street 8th Floor Hearing Room
Sacramento, California, 95814

Proposal to Amend Conflict of Interest Regulation 18700 – “Basic Rule; Application; Definitions; Guide to Conflict of Interest Regulations”

As part of the Commission’s continuing effort to update and clarify the conflict of interest regulations, staff of the Fair Political Practices Commission will be holding an interested persons meeting to solicit public input regarding proposed amendments to Regulation 18700. Last year, the Commission began the process of redrafting the conflict of interest rules with the adoption of changes to Regulation 18706 addressing the element of reasonable foreseeability under current Step 6 of the conflict of interest analysis.

Staff now returns to an examination of the preliminary stage of the conflict of interest analysis and is proposing changes to the organization and layout of this process. Current Regulation 18700 sets out the basic rule and identifies each step of the 8 step process, which provides the analytical framework in determining whether or not a conflict exists. Staff has identified several areas in the current process that can be improved upon:

- Current Regulation 18701 purports to provide a definition for “public official” but only addresses “member,” “consultant,” and “other public officials who manage public investments.”
 - The current definition of “member” has been criticized as being poorly worded and vague making it difficult to apply.
 - The definition of “consultant” has been criticized as too broad and over inclusive.
 - The final definition for “other public officials who manage public investments” should more properly be included in the Political Reform Act’s (the “Act”), disclosure provisions, not the conflict of interest provisions, since the only use of this language anywhere in the Act is for disclosure for Section 87200 statutory filers.

Staff proposes to begin the process of simplifying and clarifying the conflict of interest rules by starting with the basic rule and include all the applicable definitions needed before the analysis begins. Toward that end, proposed Regulation 18700 will now include redrafted definitions from Regulation 18701, as well as the definitional elements of what constitutes a “financial interest” (currently the “economic interests” identified in the Regulation 18703 series) including the definition of “personal financial effect” from Regulation 18703.5. Additionally, definitions will be proposed for “governmental decision” and “financial effect.”

Finally, in the upcoming months, new regulations will be added as part of a Regulation 18700 series that will clarify and codify the analysis for determining when an organization is deemed an agency (proposed Regulation 18700.1); include language from 18703.1 with respect to parent companies, subsidiary companies, and otherwise related business entities (proposed Regulation 18700.2); and address commission and incentive income from Regulation 18703.3 (proposed Regulation 18700.3).

Only proposed amendments to Regulation 18700 will be presented to the Commission at the April 25, 2013, Commission meeting. Staff has attached a working draft of the proposed amendments.

The overall goal of the reorganization will be to cut what is now the eight-step process (which is really six steps and two exceptions) down to four steps, and what is really the only exception under the statute, and can be outlined as follows:

- Two steps (one and three) would be moved into Regulation 18700, which becomes the Regulation establishing what needs to be identified before the analytical process begins. Two of the other steps were previously merged into one with the adoption of the new “reasonably foreseeable” regulation last year, which will, when implemented, become the new proposed step one at the conclusion of this project and move to Regulation 18701.
- The issue of “materiality,” which will be addressed in upcoming Commission meetings after soliciting public comment over the next few months, will be proposed as the new step two and moved to Regulation 18702. “Public generally”, which is now treated as an exception but is technically a statutory prerequisite for determining a conflict, will be moved into its proper role and become step three under the proposal.
- Finally, if after determining that a governmental decision will have a “reasonably foreseeable material financial effect, distinguishable from its effect on the general public” on one of the official’s financial interests (by answering yes to all of the questions in the first three steps), step four will identify when a public official makes, participates in making, or in any way attempts to use his or her official position to influence that governmental decision and the official would therefore have a prohibited conflict of interest.

Staff is seeking input from interested persons and soliciting comments and suggestions regarding the proposed amendments by holding an interested persons meeting to solicit both specific and general input and suggestions on the above described process. In addition to any general or specific comments on the proposal described above, staff is seeking specific comments on the following:

(1) Can we improve the language referencing parent, subsidiary, and especially, “otherwise related business entities” or are they clear and understandable and easily determined when they apply?

(2) Can we improve the language referencing commission income and incentive income? Are they too over inclusive and, if so, how? Are there any problems that arise in making a determination as to when something would fall into either of these categories?

Proposed language for Regulation 18700 can be reviewed at <http://www.fppc.ca.gov/index.php?id=450>. The Chair and Commission staff seek public input on this issue and related matters. You may participate in this Interested Persons meeting in person or by teleconference by calling (888) 751-0624 (access code 723284). For questions about participating by phone, you may contact Virginia Latteri-Lopez at (916) 322-5660. The Commission also invites written comments on this topic. You may contact Senior Commission Counsel Bill Lenkeit at (916) 322-5660 or blenkeit@fppc.ca.gov with comments or questions regarding the regulatory proposal.